

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7075 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GOVINDBHAI R THOLIA

Versus

UNION OF INDIA

Appearance:

MRS SANGITA N PAHWA for Petitioners

MR SHANTILAL S SHAH for Respondent No. 1, 2, 3, 4, 5

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 04/05/99

ORAL JUDGEMENT

The petitioners who were working as Constables under the Railway Protection Force, have filed this petition challenging the orders of dismissal dated 30.9.1988 Annexures-G & H to the petition, on the ground that no inquiry was held before passing the said order and, therefore, the impugned order is in violation of principles of natural justice. There is no dispute to the fact that the respondents dispensed with the inquiry

on the ground that the petitioners were influential persons and no witness will come forward to depose against the petitioners. The petitioners, in fact, made out a ground that even if inquiry is dispensed with, on the ground that no witness will come forward to depose against the petitioners, in the show-cause notice, as many as five persons statements were relied upon by the respondents for coming to the conclusion that the petitioners were involved in some theft. It is, therefore, the case of the petitioners that at least this witnesses could have called in the inquiry and, therefore, it cannot be said that it was impracticable before the inquiry.

Since the point raised in this petition is covered by the decision of this Court in Special Civil Application No. 1264 of 1986 dated 28th August, 1991 (Coram: G.N. Ray, CJ & C.K. Thakkar, J.) and LPA NO. 1260/98 in Special Civil Application No. 5609 of 1998 (Coram: BC Patel & AL Dave, JJ) and Special Civil Application No. 1459 of 86 with other allied matters dated 4.12.1991 (Coram: RK Abichandani, J). It is not necessary for me to enter into the merits of the case. In those cases also, the departmental inquiry was dispensed with by passing the order of punishment with respect to the identical allegations made in the present petition, this Court has set aside the order of punishment passed against those petitioners. Following the ratio of the decision of this Court in Special Civil Application No. 1264 of 1986 and other allied matters decided on 28th August, 1991, there is no justification for dispensing with the inquiry by the disciplinary authority in this manner. The decision to dispense with the inquiry has not been of any objective facts and is arbitrary and illegal. Under the circumstances, the impugned action of dispensing with the inquiry against these petitioners is therefore, set aside. Consequently, the impugned orders Annexures-G & H dated 30.9.88 passed against these petitioners will also fail.

In the result, the petition is allowed. The impugned order passed by the Disciplinary Authority and the order passed by the Appellate Authority confirming these orders are quashed and set aside. The respondents are directed to reinstate the petitioners in service in accordance with law, as if these orders were not passed. Rule is made absolute accordingly with no order as to costs.

mandora/

